

Court No. - 92

Case :- APPLICATION U/S 482 No. - 22401 of 2008

Applicant :- Manoj Kumar Srivastava

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Raghubir Singh

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Anish Kumar Gupta,J.

1. None is present on behalf of the applicant to press the instant application. However, Sri K.K. Tripathi, learned A.G.A. for the State is present.

2. The instant application has been filed seeking quashing of the order dated 18.10.2004 and the entire proceedings of Complaint Case No.5183 of 2004 (New No.1154 of 2006) (Sanjeev Verma Vs. Manoj Srivastava) under Section 138 Negotiable Instruments Act, Police Station Nai Ki Mandi, District Agra, pending in the court of Additional Civil Judge (J.D.), Court no.43, Agra.

3. From the record it is apparent that vide order dated 25.08.2008, this Court had issued notice to opposite party no.2 and further proceedings of the said case were stayed. This matter was earlier listed on 21.08.2023 and 04.09.2023 and none was present on behalf of applicant to press the instant application.

4. The instant case has been filed by opposite party no.2 for dishonour of cheque of Rs.1,00,000/- dated 15.05.2004 given by the applicant and when the said cheque was presented for encashment it was dishonoured on 28.07.2004 due to insufficient fund. Thereafter, the opposite party no.2 had sent a demand notice to the applicant herein, thereafter despite the service of notice applicant failed to make the payment of the cheque amount, therefore, the instant complaint case was lodged against the applicant herein for dishonour of cheque under Section 138 of Negotiable Instruments Act. From the aforesaid facts, as narrated in the complaint which was supported by an affidavit, the copy of cheque, dishonour memo and a copy of legal notice, a *prima facie* case is made out against the applicant. Therefore, Vide order dated 18.10.2004, the applicant was summoned for the offence under Section 138 Negotiable Instruments, Act against, which instant application has been filed.

5. In the considered opinion of this Court, from the allegation as made in the complaint filed by opposite party no.2 and the supporting documents i.e. affidavit, the copy of cheque, dishonour memo and legal notice etc., which are available on record, a *prima facie* case is made out against the applicant herein and subsequently, in view of presumption under Section 139 Negotiable Instruments Act, therefore, the instant application is devoid of merit and is hereby **dismissed**.

Order Date :- 8.12.2023

Atul